

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

C&SM INT'L, a South Korea
Corporation;

Plaintiff,

v.

NB BROTHER CORPORATION, a
California Corporation; SUPERLINE,
INC., a California Corporation d/b/a
NEW MIX; ROSS STORES, INC., a
California Corporation; and DOES 1-
10, inclusive,

Defendant.

Case No. 2:17-cv-01326-JFW-JPR

STIPULATED PROTECTIVE
ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth in
3 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
4 file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a party
6 seeks permission from the court to file material under seal.

7 8 B. GOOD CAUSE STATEMENT

9
10 This action is likely to involve trade secrets, customer and pricing lists and
11 other valuable research, development, commercial, financial, technical and/or
12 proprietary information for which special protection from public disclosure and
13 from use for any purpose other than prosecution of this action is warranted. Such
14 confidential and proprietary materials and information consist of, among other
15 things, confidential business or financial information, information regarding
16 confidential business practices, or other confidential research, development, or
17 commercial information (including information implicating privacy rights of third
18 parties), information otherwise generally unavailable to the public, or which may be
19 privileged or otherwise protected from disclosure under state or federal statutes,
20 court rules, case decisions, or common law. Accordingly, to expedite the flow of
21 information, to facilitate the prompt resolution of disputes over confidentiality of
22 discovery materials, to adequately protect information the parties are entitled to keep
23 confidential, to ensure that the parties are permitted reasonable necessary uses of
24 such material in preparation for and in the conduct of trial, to address their handling
25 at the end of the litigation, and serve the ends of justice, a protective order for such
26 information is justified in this matter. It is the intent of the parties that information
27 will not be designated as confidential for tactical reasons and that nothing be so
28 designated without a good faith belief that it has been maintained in a confidential,

1 non-public manner, and there is good cause why it should not be part of the public
2 record of this case.

3
4 2. DEFINITIONS

5 2.1 Action: [this pending federal law suit]. [*Option: consolidated or
6 related actions.]

7 2.2 Challenging Party: a Party or Non-Party that challenges the
8 designation of information or items under this Order.

9 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for
11 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
12 the Good Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 2.6 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 2.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this Action.

25 2.8 House Counsel: attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.

28 2.9 Non-Party: any natural person, partnership, corporation, association, or

1 other legal entity not named as a Party to this action.

2 2.10 Outside Counsel of Record: attorneys who are not employees of a
3 party to this Action but are retained to represent or advise a party to this Action and
4 have appeared in this Action on behalf of that party or are affiliated with a law firm
5 which has appeared on behalf of that party, and includes support staff.

6 2.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

11 2.13 Professional Vendors: persons or entities that provide litigation
12 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
13 demonstrations, and organizing, storing, or retrieving data in any form or medium)
14 and their employees and subcontractors.

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery
18 Material from a Producing Party.

19
20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.

26 Any use of Protected Material at trial shall be governed by the orders of the
27 trial judge. This Order does not govern the use of Protected Material at trial.

28 4. DURATION

1 Once a case proceeds to trial, all of the information that was designated as
2 confidential or maintained pursuant to this protective order becomes public and will
3 be presumptively available to all members of the public, including the press, unless
4 compelling reasons supported by specific factual findings to proceed otherwise are
5 made to the trial judge in advance of the trial. See Kamakana v. City and County of
6 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
7 showing for sealing documents produced in discovery from “compelling reasons”
8 standard when merits-related documents are part of court record). Accordingly, the
9 terms of this protective order do not extend beyond the commencement of the trial.

10 11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.
13 Each Party or Non-Party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. The Designating Party must designate for
16 protection only those parts of material, documents, items, or oral or written
17 communications that qualify so that other portions of the material, documents,
18 items, or communications for which protection is not warranted are not swept
19 unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified or that have been made for an improper
22 purpose (e.g., to unnecessarily encumber the case development process or to impose
23 unnecessary expenses and burdens on other parties) may expose the Designating
24 Party to sanctions.

25 If it comes to a Designating Party’s attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

28 5.2 Manner and Timing of Designations. Except as otherwise provided in

1 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
2 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
3 under this Order must be clearly so designated before the material is disclosed or
4 produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
10 contains protected material. If only a portion or portions of the material on a page
11 qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and
16 before the designation, all of the material made available for inspection shall be
17 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
18 documents it wants copied and produced, the Producing Party must determine which
19 documents, or portions thereof, qualify for protection under this Order. Then, before
20 producing the specified documents, the Producing Party must affix the
21 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
22 portion or portions of the material on a page qualifies for protection, the Producing
23 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
24 markings in the margins).

25 (b) for testimony given in depositions that the Designating Party identify
26 the Disclosure or Discovery Material on the record, before the close of the
27 deposition all protected testimony.

28 (c) for information produced in some form other than documentary and

1 for any other tangible items, that the Producing Party affix in a prominent place on
2 the exterior of the container or containers in which the information is stored the
3 legend “CONFIDENTIAL.” If only a portion or portions of the information
4 warrants protection, the Producing Party, to the extent practicable, shall identify the
5 protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the Designating Party’s right to secure protection under this Order for such material.
9 Upon timely correction of a designation, the Receiving Party must make reasonable
10 efforts to assure that the material is treated in accordance with the provisions of this
11 Order.

12 13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37.1 et seq.

19 6.3 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party’s designation until the Court rules on the
26 challenge.

27 28 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this
3 Action only for prosecuting, defending, or attempting to settle this Action. Such
4 Protected Material may be disclosed only to the categories of persons and under the
5 conditions described in this Order. When the Action has been terminated, a
6 Receiving Party must comply with the provisions of section 13 below (FINAL
7 DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons
10 authorized under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated
14 “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
16 well as employees of said Outside Counsel of Record to whom it is reasonably
17 necessary to disclose the information for this Action;

18 (b) the officers, directors, and employees (including House Counsel) of
19 the Receiving Party to whom disclosure is reasonably necessary for this Action;

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this Action and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff;

25 (f) professional jury or trial consultants, mock jurors, and Professional
26 Vendors to whom disclosure is reasonably necessary for this Action and who have
27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information;

2 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
3 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
4 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
5 not be permitted to keep any confidential information unless they sign the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
7 agreed by the Designating Party or ordered by the court. Pages of transcribed
8 deposition testimony or exhibits to depositions that reveal Protected Material may
9 be separately bound by the court reporter and may not be disclosed to anyone except
10 as permitted under this Stipulated Protective Order; and

11 (i) any mediator or settlement officer, and their supporting personnel,
12 mutually agreed upon by any of the parties engaged in settlement discussions.

13
14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
15 IN OTHER LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation
17 that compels disclosure of any information or items designated in this Action as
18 “CONFIDENTIAL,” that Party must:

19 (a) promptly notify in writing the Designating Party. Such notification
20 shall include a copy of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order
22 to issue in the other litigation that some or all of the material covered by the
23 subpoena or order is subject to this Protective Order. Such notification shall include
24 a copy of this Stipulated Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be
26 pursued by the Designating Party whose Protected Material may be affected.

27 If the Designating Party timely seeks a protective order, the Party served with
28 the subpoena or court order shall not produce any information designated in this

1 action as “CONFIDENTIAL” before a determination by the court from which the
2 subpoena or order issued, unless the Party has obtained the Designating Party’s
3 permission. The Designating Party shall bear the burden and expense of seeking
4 protection in that court of its confidential material and nothing in these provisions
5 should be construed as authorizing or encouraging a Receiving Party in this Action
6 to disobey a lawful directive from another court.

7
8 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
9 PRODUCED IN THIS LITIGATION

10 (a) The terms of this Order are applicable to information produced by a
11 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
12 produced by Non-Parties in connection with this litigation is protected by the
13 remedies and relief provided by this Order. Nothing in these provisions should be
14 construed as prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party’s confidential information in its possession, and the Party is
17 subject to an agreement with the Non-Party not to produce the Non-Party’s
18 confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party
20 that some or all of the information requested is subject to a confidentiality
21 agreement with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated
23 Protective Order in this Action, the relevant discovery request(s), and a reasonably
24 specific description of the information requested; and

25 (3) make the information requested available for inspection by the
26 Non-Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this court within
28 14 days of receiving the notice and accompanying information, the Receiving Party

1 may produce the Non-Party's confidential information responsive to the discovery
2 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
3 not produce any information in its possession or control that is subject to the
4 confidentiality agreement with the Non-Party before a determination by the court.
5 Absent a court order to the contrary, the Non-Party shall bear the burden and
6 expense of seeking protection in this court of its Protected Material.

7
8 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under this
11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
12 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
13 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
14 persons to whom unauthorized disclosures were made of all the terms of this Order,
15 and (d) request such person or persons to execute the "Acknowledgment and
16 Agreement to Be Bound" that is attached hereto as Exhibit A.

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18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without
25 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
26 as the parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the
28 parties may incorporate their agreement in the stipulated protective order submitted

1 to the court provided the Court so allows.

2
3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
13 only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. If a Party's request to file Protected Material
15 under seal is denied by the court, then the Receiving Party may file the information
16 in the public record unless otherwise instructed by the court.

17
18 **13. FINAL DISPOSITION**

19 After the final disposition of this Action, as defined in paragraph 4, within 60
20 days of a written request by the Designating Party, each Receiving Party must return
21 all Protected Material to the Producing Party or destroy such material. As used in
22 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, and any other format reproducing or capturing any of the Protected
24 Material. Whether the Protected Material is returned or destroyed, the Receiving
25 Party must submit a written certification to the Producing Party (and, if not the same
26 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
27 (by category, where appropriate) all the Protected Material that was returned or
28 destroyed and (2) affirms that the Receiving Party has not retained any copies,

1 abstracts, compilations, summaries or any other format reproducing or capturing any
2 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
4 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
5 reports, attorney work product, and consultant and expert work product, even if such
6 materials contain Protected Material. Any such archival copies that contain or
7 constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION).

9
10 14. Any violation of this Order may be punished by any and all appropriate
11 measures including, without limitation, contempt proceedings and/or monetary
12 sanctions.

13
14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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16 Dated: May 10, 2017

17
18 /s/ C. Yong Jeong

19 Chan Yong Jeong

20 JEONG & LIKENS, L.C.

21 Attorney for Plaintiff

22
23 Dated: May 10, 2017

24
25 /s/ Frank N. Lee

26 Frank N. Lee

27 LAW OFFICE OF FRANK N. LEE

28 Attorneys for Defendants,

ROSS STORES, INC.; SUPERLINE, INC.

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Dated: May 10, 2017

/s/ Miles L. Prince
David L. Prince
Miles L. Prince
Attorneys for Defendant,
NB BROTHER CORP.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: May 8, 2017


Honorable Jean P. Rosenbluth
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of _____ *C&SM INT'L v. NB BROTHERS CORP.; et al 2:17-*
9 *cv-01326-JFW-JPR*. I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that
13 is subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print
19 or type full name] of _____ [print or type
20 full address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____